

IC 3-12-10

Chapter 10. State Recount Commission

IC 3-12-10-1

Establishment of commission

Sec. 1. The state recount commission is established.

As added by P.L. 7-1986, SEC.18. Amended by P.L. 11-1993, SEC.4.

IC 3-12-10-2 Repealed

(Repealed by P.L.8-1995, SEC.71.)

IC 3-12-10-2.1

Members

Sec. 2.1. (a) Except as provided in this section, the secretary of state and the designee of the state chairman of each of the major political parties of the state shall serve as members of the state recount commission.

(b) Except as provided in this section, the secretary of state shall serve as the chair of the state recount commission.

(c) If an election to the office of secretary of state is the subject of a petition filed under IC 3-12-11, final determination of all petitions filed under IC 3-12-11 relating to that election must be made before January 1 after the election.

(d) The secretary of state may not serve on the commission if the secretary of state is:

(1) a petitioner under IC 3-12-11; or

(2) named as a candidate in a petition under IC 3-12-11;

until the commission makes a final determination under IC 3-12-11 of all related petitions in which the secretary of state is a petitioner or is named.

(e) If the secretary of state may not serve on the commission under subsection (d), the state chairman of the same major political party as the secretary of state shall designate another individual to serve as a member and chair of the commission. The other individual must have voted in the most recent primary election of the political party of the state chairman making the appointment. The individual serves until the commission issues its final determination of all petitions relating to the election that are described in subsection (d). The secretary of state shall then resume as a member and the chairman of the state recount commission.

(f) An individual who serves on the state recount commission as secretary of state ceases to be a member of the commission when the individual ceases to be secretary of state.

As added by P.L.8-1995, SEC.56.

IC 3-12-10-2.2

Purpose; administration; expenses; reversion to general fund; appropriations

Sec. 2.2. (a) The state recount fund is established for the purpose of receiving, holding, and disbursing funds as a fiduciary for the state

recount commission and individuals who have provided a cash deposit under this article. The fund shall be administered by the administrative division of the office of the secretary of state.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(d) All money accruing to the fund is appropriated continuously for the purposes specified in subsection (a).

As added by P.L.176-1999, SEC.104.

IC 3-12-10-2.5

Recount director

Sec. 2.5. The state recount commission shall employ and set the salary of a recount director. The recount director shall perform the tasks delegated to the director by the commission.

As added by P.L.3-1987, SEC.386.

IC 3-12-10-3

Per diem; expenses

Sec. 3. (a) Each member of the state recount commission other than the secretary of state is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b).

(b) Each member of the state recount commission is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the state budget agency.

As added by P.L.7-1986, SEC.18. Amended by P.L.3-1987, SEC.387.

IC 3-12-10-4

Recount and contest proceedings

Sec. 4. (a) The state recount commission shall conduct recount proceedings under IC 3-12-11 resulting from:

- (1) a presidential primary election;
- (2) the nomination of a candidate to a federal, state, or legislative office in a primary election; or
- (3) an election for a federal, state, or legislative office.

(b) The state recount commission shall conduct contest proceedings under IC 3-12-11 resulting from:

- (1) a presidential primary election;
- (2) the nomination of a candidate to a federal, state, or legislative office in a primary election; or
- (3) an election for a federal, state, or legislative office.

As added by P.L.7-1986, SEC.18. Amended by P.L.3-1987, SEC.388; P.L.10-1988, SEC.163; P.L.14-2004, SEC.163.

IC 3-12-10-5

Powers; rules

Sec. 5. (a) The state recount commission may, to comply with

section 4 of this chapter:

- (1) impound, take possession of, transport, or otherwise protect any election records or equipment related to a recount or contest;
- (2) issue subpoenas, discovery orders, and protective orders;
- (3) conduct and regulate the course of hearings and other proceedings;
- (4) manage its internal affairs;
- (5) adopt rules under IC 4-22-2; or
- (6) exercise any other necessary power to perform its functions under this article.

(b) Rules adopted by the state recount commission for the conduct of a recount or contest proceeding must uniformly apply throughout Indiana.

(c) An impoundment order issued under subsection (a)(1) may not prevent a circuit court clerk or board of registration from copying election material other than ballots if the clerk or board copies the material under the supervision of the state police department.

As added by P.L. 7-1986, SEC.18. Amended by P.L.3-1987, SEC.389.

IC 3-12-10-5.5

Impoundment; use of copies of election material

Sec. 5.5. A circuit court clerk or board of registration may use a copy of election material other than ballots made under section 5 of this chapter instead of an original subject to an impoundment order under that section until the commission orders the release of the original.

As added by P.L.3-1987, SEC.390.

IC 3-12-10-6

Election records or equipment; impoundment, possession, transportation, or protection

Sec. 6. Without the filing of a petition under IC 3-12-11, the state recount commission may impound, take possession of, transport, or otherwise protect any election records or equipment that the commission determines may be the subject of:

- (1) a recount proceeding; or
- (2) a contest proceeding conducted by the state recount commission under IC 3-12-11.

As added by P.L. 7-1986, SEC.18. Amended by P.L.3-1987, SEC.391; P.L.10-1988, SEC.164.

IC 3-12-10-7

Delegation of powers

Sec. 7. (a) The state recount commission may designate one (1) or more members of the commission or one (1) or more other persons to exercise any of its powers, other than the:

- (1) final adoption of rules;
- (2) final determination of a recount under IC 3-12-11; or
- (3) final determination of a contest under IC 3-12-11.

(b) Each person designated by the commission under subsection (a) who is not a member of the commission must be an attorney (as defined in IC 23-1.5-1-4).

As added by P.L.7-1986, SEC.18. Amended by P.L.3-1987, SEC.392.

IC 3-12-10-8

State board of accounts; conduct of recount or other contest proceedings

Sec. 8. The state board of accounts shall conduct any recount or other contest proceeding ordered by the state recount commission in accordance with this article and guidelines adopted by the commission.

As added by P.L.7-1986, SEC.18. Amended by P.L.176-1999, SEC.105.

IC 3-12-10-9

State police department; duties

Sec. 9. The state police department shall:

- (1) serve any notices or other papers;
- (2) secure or transport any election records or equipment; and
- (3) perform any other law enforcement duties;

ordered by the state recount commission.

As added by P.L.7-1986, SEC.18.

IC 3-12-10-10

Secretary of state; assignment of staff and facilities

Sec. 10. The secretary of state may assign any of the election division's staff and facilities to the state recount commission to carry out the commission's responsibilities.

As added by P.L.7-1986, SEC.18. Amended by P.L.8-1995, SEC.57.

IC 3-12-10-11

Reimbursement of agencies or offices for expenses

Sec. 11. The state recount commission shall reimburse any agency or office described in sections 8, 9, and 10 of this chapter that incurs any expense to carry out the responsibilities of the commission in conformity with the policies and procedures established by the state budget agency.

As added by P.L.7-1986, SEC.18.

IC 3-12-10-12

Expenses of recount; expenses not reimbursed

Sec. 12. (a) The expenses of a recount conducted by the state recount commission shall be paid from the state recount fund following the commission's determination of whether a full or partial refund of the cash deposit should be granted under IC 3-12-11-10.

(b) The expenses of a contest conducted by the state recount commission shall be paid from the state recount fund.

(c) Notwithstanding subsections (a) and (b), the expenses incurred by a party to a recount or contest for:

(1) the appearance of an individual; or
(2) the copying or production of documents;
in response to a subpoena approved by the state recount commission shall be borne by that party and are not subject to reimbursement under this chapter.

(d) A person (other than a party to a recount or contest) who claims reimbursement of expenses described by subsection (a) or (b) must submit a claim to the state recount commission not later than noon sixty (60) days after the commission adopts a final order concerning the recount or contest. If the commission approves the claim, the treasurer of state shall issue a warrant to the person in accordance with IC 5-13-5.

(e) There is appropriated to the state recount fund from the state general fund an amount sufficient for the state recount commission's use in the payment of expenses under this section.

As added by P.L.7-1986, SEC.18. Amended by P.L.10-1988, SEC.165; P.L.176-1999, SEC.106; P.L.14-2004, SEC.164.

IC 3-12-10-13

Reimbursement by candidate filing petition; petitioner's liability for expenses of another party

Sec. 13. (a) This section does not apply to a petitioner who is determined to have been nominated or elected after the recount or the contest.

(b) A candidate filing a petition under IC 3-12-11 shall reimburse the state for the expenses of the state recount commission in the amount of the cash deposit required for a recount under IC 3-12-11-10 or a contest under IC 3-12-11-11. However, the petitioner is not liable for the expenses chargeable to another party under section 14 of this chapter.

As added by P.L.7-1986, SEC.18. Amended by P.L.3-1987, SEC.393; P.L.8-1995, SEC.58.

IC 3-12-10-14

Reimbursement by candidate filing cross-petition or opposing party in a contest action

Sec. 14. (a) This section does not apply to:

- (1) a cross-petitioner who is determined to have been nominated or elected after a recount; or
- (2) an opposing party in a contest action who prevails.

(b) A candidate filing a cross-petition under IC 3-12-11 or an opposing party in a contest action under IC 3-12-11 shall reimburse the state for the expenses of the state recount commission in the amount of the cash deposit required under IC 3-12-11-11.

As added by P.L.7-1986, SEC.18. Amended by P.L.3-1987, SEC.394; P.L.8-1995, SEC.59.

IC 3-12-10-15

Determination of expenses

Sec. 15. The state recount commission shall determine the

expenses chargeable to a person under sections 13 and 14 of this chapter.

As added by P.L.7-1986, SEC.18.

IC 3-12-10-16

Application of IC 4-21.5

Sec. 16. IC 4-21.5 does not apply to the state recount commission.

As added by P.L.7-1986, SEC.18. Amended by P.L.7-1987, SEC.2.

IC 3-12-10-17

Stay of court action pending final determination by recount commission

Sec. 17. Any court action related to the election for an office that is the subject of a:

- (1) recount proceeding under IC 3-12-11; or
- (2) contest proceeding under IC 3-12-11;

is stayed until the state recount commission has rendered a final determination.

As added by P.L.7-1986, SEC.18. Amended by P.L.3-1987, SEC.395.

IC 3-12-10-18

Judicial review

Sec. 18. Any party to a final determination of the state recount commission concerning a nomination subject to IC 3-12-11 or election to a state office other than governor or lieutenant governor may file a petition with the Marion County circuit court for judicial review of the determination no later than noon thirty (30) days after notice of the determination is served on the party. If the court finds that a party has been substantially prejudiced by commission action that is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or
- (4) without observance of procedure required by law;

the court may set aside the final determination of the commission. The court may remand the case to the commission for further proceedings and compel commission action that has been unreasonably delayed or unlawfully withheld.

As added by P.L.7-1986, SEC.18. Amended by P.L.3-1987, SEC.396; P.L.10-1988, SEC.166.